

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

UPLAND UNIFIED SCHOOL DISTRICT.

OAH Case No. 2016040224

ORDER DENYING STUDENT'S
MOTION FOR STAY PUT

On April 4, 2016, Parents on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing naming Upland Unified School District. On April 4, 2016, Student filed with OAH a motion for stay put.

On April 4, 2016, Upland filed with OAH a pleading entitled "Opposition to Motion for Stay Put and Motion to Dismiss."

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 ["stay put" placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d

532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability.]

Residency

Under the Individuals with Disabilities Education Act, local educational agencies are charged with “providing for the education of children with disabilities within its jurisdiction.” (20 U.S.C. § 1413(a)(1).) California law requires students to attend the public school “in which the residency of either the parent or legal guardian is located.” (Ed. Code, § 48200.) Residency under the IDEA is measured by “normal standards.” (*Union School Dist. v. Smith* (1994) 15 F.3d 1519, 1525.) In California, Government Code section 244 lists “the basic rules generally regarded as applicable to domicile [legal residency].” (*Fenton v. Board of Directors* (1984) 156 Cal.App.3d 1107, 1114.)

Government Code, section 244, states in relevant part:

In determining the place of residence [domicile] the following rules shall be observed:

- (a) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.
- (b) There can only be one residence.
- (c) A residence cannot be lost until another is gained.
- (d) The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of such unmarried minor child. [¶] . . . [¶]
- (f) The residence can be changed only by the union of act and intent.

Students are permitted to apply for interdistrict transfers pursuant to Education Code section 46600.

UNDISPUTED FACTS

Student is a five year old year old boy, who is eligible for special education. Student resided within the boundaries of Upland until February 24, 2016. He attended the Step Up preschool program at the Sierra Vista Elementary School, an Upland school, with a one-to-one aide. After moving within the boundaries of the Ontario-Montclair School District, Student applied for an interdistrict transfer so as to remain in the Step Up program at Sierra Vista for the remainder of the 2015-2016 school year. Ontario-Montclair approved the

interdistrict transfer request. On March 29, 2016, Upland denied the transfer request citing that the pre-school program was at capacity.

In his complaint, Student alleges that Upland has procedurally denied him a free appropriate public education by its denial of the interdistrict transfer request when it failed (a) to consider Student's potential regression if forced to change pre-school programs for the remainder of the school year, and (b) to consider Student's teacher's recommendation that Student continue in the Step Up class for the remainder of the school year.

DISCUSSION

Here there is no dispute that Student no longer resides within Upland, and that his district of residency is Ontario-Montclair. The only dispute is whether he has been denied a FAPE by Upland's refusal to grant his application for interdistrict transfer. As stated above, Upland contends that the propriety of Upland's denial of the transfer request is not within the jurisdiction of OAH.

Education Code section 46601, subdivision (c)(1) requires that an appeal of the denial of an interdistrict transfer to be made within 30 calendar days of the denial to the county board of education having jurisdiction over the school district of residency.

OAH decisions are not binding precedent, but maybe persuasive authority. (Cal. Code Regs., tit. 5, § 3085.) In *Student v. Fresno Unified School District* (OAH Case No. 2008100696, February 25, 2009), OAH held jurisdiction to hear an appeal of an interdistrict transfer lies with the county board of education. *Fresno* noted that "[N]o statute (State or federal), regulation or other authority provides a special education due process hearing officer in an IDEA hearing with concurrent jurisdiction to hear or decide an appeal of a denial of an interdistrict transfer." (p. 4.) In a 2011 case, OAH ruled that it was without jurisdiction in cases involving denial of interdistrict transfers. (*Student v. Clovis Unified School District and Fresno Unified School District*, OAH Case No. 2011070758, August 4, 2011, Order granting Motion to Dismiss.) The ALJ finds that both of these cases are persuasive.

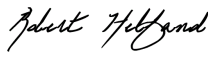
Student does cite to three cases to support its position.¹ In all these cases, the hearing officers ordered stay put in matters where the students had been placed due to interdistrict transfers which had lapsed or had been revoked. Student fails to cite any statute or regulation to support its position that OAH has jurisdiction over interdistrict denials to warrant the granting of Student's motion for stay put.

¹ The three cases are *Student v. Fremont Unified School District and New Haven Unified School District* (OAH Case no. 20100313, June 21, 2010, Order Granting Motion for Stay Put); *Student v. Monrovia Unified School District* (Ca. Sp. Ed. Hrng Office Case No. 99-0633/01-00302, August 20, 2001), and a New Jersey decision, *Great Meadows Regional Board of Education* (47 IDELR 274, October 12, 2006).

ORDER

Student's motion for stay put is DENIED.

DATE: April 12, 2016

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ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings